

**BEFORE THE THREE MEMBER DUE PROCESS HEARING PANEL
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION
PURSUANT TO SECTION 162.961, RSMo.**

| | | |
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| | , by and through his mother, |) |
| | |) |
| | Petitioners |) |
| vs. | |) |
| | |) |
| | Special School District of St. Louis County |) |
| | and Parkway School District |) |
| | Respondents |) |

COVER SHEET

PETITIONERS

Student's Name:

DOB:

Grade Level: 5th

Parent's Name:

Address:

Representative: None

Address:

Same

RESPONDENTS

Local Education Agency: Parkway C-2 School District (LEA)

Address: 455 N. Woods Mill Rd.
St. Louis, Missouri 63017-3327
Attn. Paul Delanty, Interim Supt.

and

Special School District of St. Louis County Missouri
12110 Clayton Road
St. Louis, MO 63131- 2516
Attn. Dr. Peter T. Kachris

Representative (SSD): Mr. Robert Thomeczek

Address: Thomeczek Law Firm LLC

1120 Olivette Executive Parkway, Suite 210

St. Louis, Missouri 63132

Hearing Date: August 25 and September 1, 2004

Date for Mailing of Decision: September 24, 2004

Date of Decision: September 24, 2004

Date Decision Mailed: September 24, 2004

Panel Members: Dr. Karen Aslin
Dr. Margaret Gray
Ms. Margaret M. Mooney, Chairperson

ISSUES AND PURPOSE OF HEARING

The Petitioners' issue for Hearing was:

Parent objected to Respondents' decision to place student in a self-contained class, which was out of the regular education setting more than 60% of the time.

TIME LINE INFORMATION

Petitioners' request for due process was sent to the Department of Elementary and Secondary Education on May 19, 2004, a Decision was initially due by July 6, 2004. A Notice of Hearing was issued by the Chair of the Hearing Panel on setting the Hearing on July 1, 2004.

Thereafter, Counsel for the Special School District requested that the time lines for the decision be extended to September 1, 2004. Counsel for Special School District requested a continuance of the Hearing until August 5-6, 2004. Parent did not oppose the extension. The Chair notified the parties on June 16, 2004 that the matter was reset for Hearing on August 5-6, 2004 with the Decision to be rendered by September 1, 2004.

On July 20, 2004 School District filed its Motion to Dismiss, which was received by Parent. This motion was discussed by the parties and the Chair during a telephone conference on July 27, 2004, Parent clarified the issue as placement outside of the regular class more than 60% of

the time. The parties agreed to continue the hearing until August 25, 2004. Special School District's Motion to Dismiss this due process for failure to persecute was denied.

The Hearing was convened at Mason Ridge Elementary School at 9:30 a.m. on August 25, 2004.

At the Hearing (a) Parent was not accompanied by counsel; (b) Parent elected to open the Hearing to the public; and (c) Student was not present. Parent was accompanied by her fiancé, Brian Johnson and Mary Meehan from the Voluntary Interdistrict Choice (VIC) program office.

Prior to hearing any testimony the Hearing Panel marked and received into evidence Hearing Panel Exhibits 1 through 15. Parent did not offer any exhibits into evidence. Special School District offered Respondent's Exhibits 1 through 55 into evidence on the first day of Hearing.

The Hearing was not completed on August 25, 2004. Parent testified and was cross-examined; School District presented one witness, Tara Copeland. The parties agreed to reconvene on September 1, 2004. On September 1, 2004, the Hearing reconvened. Special School District completed the testimony of Tara Copeland and presented four additional witnesses. Parent was given the opportunity to review Respondent's Exhibits and to make her objections on the second day of the Hearing. Parent objected to exhibits from her child's kindergarten year. All of Respondent's Exhibits were received over objection with the caveat that the exhibits from Student's kindergarten year would be accorded appropriate weight.

On September 1, 2004 at the conclusion of the testimony and evidence, the time line was extended at the joint request of the parties to September 24, 2004.

The Decision was mailed to both parties by certified mail on September 24, 2004

BEFORE THE THREE MEMBER HEARING PANEL
CONVENED PURSUANT TO RSMO §162.961

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| , by his mother |) | |
| |) | |
| Petitioners. |) | |
| |) | |
| v. |) | |
| |) | |
| Special School District of St. Louis County, Missouri |) | |
| and Parkway C-2 School District |) | |
| |) | |
| Respondents. |) |) |

DECISION AND ORDER

This due process hearing for (“Student”) convened pursuant to the Order of the Hearing Chair on August 25, 2004 at Mason Ridge School. Present at the Hearing were Panel Members Margaret M. Mooney, Dr. Karen Aslin and Dr. Margaret Gray, (“Parent”) on behalf of Petitioners and Ms. Leora Andrews, Special School District for St. Louis County, Missouri (Special School District or SSD) representative and Mr. Robert Thomeczek, counsel for the Special School District.

On August 25, 2004 the Hearing Chair orally requested the parties to confirm on the record that the issue for Hearing was the placement of Student outside of regular education for more than 60% of the time as stated during a telephone conference held with the parties on July 27, 2004. (Tr. I, 8).

The issue of placement was one that may be heard by a Due Process Hearing Panel appointed pursuant to R.S. Mo. § 162.961 under the IDEA 20 U.S.C. §§1412 et seq. and pursuant to 20 U.S.C. §1415(b) (6).

When the Hearing convened, the Chair identified for the record and provided all present with copies of Hearing Panel Exhibits 1 through 15. Petitioner Parent stated on the record that the Hearing would be “open.” Petitioner Parent did not offer any exhibits at the Hearing. She offered her own testimony. Parent was assisted in her presentation by Mary Meehan, a representative of the Voluntary Interdistrict Choice (“VIC”) program office. The Special School District (“SSD”) was represented by attorney Robert Thomeczek. SSD cross-examined Parent and presented five witnesses: Tara Copeland, Laura Barnhill, Allison Burner, Lynn Hedrick and Lori Zamler. SSD offered 55 exhibits into evidence on the first day of Hearing. Parent was given until the second day of Hearing to review SSD’s exhibits and make objections. Parent stated her objections on the record to the information regarding Student’s Kindergarten year. The Hearing Panel determined that all of SSD’s exhibits would be received into evidence, but explained to Parent that not all exhibits would receive the same weight.

At the conclusion of the presentation of evidence the parties agreed to have brief oral statements by each party and that neither party would submit any written materials to the Hearing Panel.

A. Time Line Information

1. On or about May 19, 2004, the Parent wrote to DESE requesting a due process hearing. The request for the due process hearing was received by DESE on May 19, 2004. Accordingly, the due process hearing had to be held, and a written decision rendered by July 6,

2004. A Notice of Hearing was issued by the Chair of the Hearing Panel on June 16, 2004 setting the Hearing on July 1, 2004.

2. Thereafter on or about June 20, 2004 Counsel for the District requested that the time lines for the decision be extended to September 1, 2004. On September 1, 2004 at the conclusion of the testimony and evidence, the time line was extended at the joint request of the parties to September 24, 2004.

B. The Issues and Relief Requested

Parent contends that SSD and the Parkway C-2 School District violated Student's and Parent's rights by seeking to place him in special education more than 60% of the time. Parent wants Student to remain in regular education and receive special education services on a pull out basis in the resource room.

FINDINGS OF FACT

1. Student is a ten year old male [DOB], who resides with his mother ("Parent,") in the City of St. Louis. Student participates in education in the Parkway School District and Special School District of St. Louis County through the Voluntary Interdistrict Choice ("VIC") program.

2. Student is a child with a disability for purposes of the Individuals with Disabilities Education Act, and a handicapped child for purposes of Missouri law. Student has an educational diagnosis of Other Health Impaired ("OHI") as a result of testing conducted by Allison Burner, a licensed psychologist employed by the Special School District during his kindergarten year in 2000, which found him to have Attention Deficit Hyperactivity Disorder ("ADHD"). (Ex. R-9).

3. Student does not have a medical diagnosis of ADHD and he does not take any medications for ADHD. (Tr. I, 29-31).

4. Pursuant to Missouri law, the Special School District of St. Louis County (“SSD”) is responsible for providing special education and related services to students with disabilities, as defined by the Missouri State Plan for Implementing Part B of the Individuals with Disabilities Education Act, who participate in the VIC program in school districts that lie within St. Louis County. (Tr. I, 25).

5. The District was represented by Robert Thomeczek, Thomeczek Law Firm, 1120 Olivette Parkway, Suite 210, St. Louis, Missouri 63132.

6. Parent was not represented by counsel, but was assisted at the hearing by Mary Meehan, an employee of the VIC program. (Tr. I, 6-8).

7. The Hearing Panel for the due process proceeding was:

Dr. Karen Aslin, Panel Member
Dr. Margaret Gray, Panel Member
Margaret M. Mooney, Hearing Chairperson

8. On or about May 19, 2004, the Parent wrote to DESE requesting a due processing hearing. (HP Ex 1). The request for the due process hearing was received by DESE on May 19, 2004.

9. On or about May 19, 2004 Ms. Pam Williams, Director for Special Education Compliance at DESE notified the Parent that her due process request had been received and that she needed to select a hearing panel member for the requested due process hearing. Ms. Williams provided the Parent with a copy of the Procedural Safeguards for Parents and Children (HP Ex. 2, 3).

10. On or about June 2, 2004 Ms. Williams notified the Hearing Chair and the Hearing Panel Members (HP Ex. 4 and 5) that they had been selected to serve on the Hearing Panel for this Due Process.

11. On June 4, 2004 the Hearing Chair notified the parties that the due process hearing was required to be held and a written decision rendered by July 6, 2004. (HP Ex. 6).

12. On or about June 14, 2004, Counsel for SSD requested that the time lines for the decision be extended through September 1, 2004. (HP Ex. 7). On June 16, 2004 the Hearing Chair extended the time lines in the case to and including September 1, 2004. (HP Ex. 8).

13. Prior to Hearing on July 20, 2004, SSD filed a Motion to Dismiss (HP Ex. 9). A phone conference was held with the parties on July 27, 2004 at which time Parent identified the issue for hearing to be the placement of Student in special education for more than 60% of the time.

14. During the July 27, 2004 phone conference, Parent agreed to transfer Student from Mason Ridge Elementary School to Pierremont Elementary School. Both schools are in the Parkway School District and served by SSD. Parent confirmed her agreement to the school transfer at the Hearing. (Tr. I, 46).

15. On August 3, 2004 the Hearing Chair issued a Decision denying the Motion to Dismiss based on the Parent's representation to Counsel and the Hearing Chair regarding the issues for hearing.

16. Prior to Hearing, the SSD provided the Hearing Chairperson and Panel Members with a list of witnesses and copies of Respondent's Exhibits 1-55 as required by 34 C.F.R. §300.508 and the Missouri State Plan. Parent did not provide a witness list or copies of exhibits.

17. On August 25, 2004 the Due Process Hearing was convened at Mason Ridge School, 715 South Mason Road, St. Louis, Missouri 63141. Present were the Hearing Chair, Hearing Panel Members; the Parent together with her fiancé, Brian Johnson and Mary Meehan, representative from VIC program; Counsel for the SSD, Administrators and witnesses for the SSD. The hearing of evidence was not completed on August 25, 2004, and by agreement, the Hearing was continued on September 1, 2004.

18. During the Hearing Respondent's Exhibits 1 through 55 were introduced by SSD and received into evidence as recorded in the Hearing transcript. Hearing Panel Exhibits 1 through 15 were introduced and made a part of the record in this case.

19. District sought to evaluate Student on February 15, 2000. Parent consented to this evaluation, but indicated concerns regarding placement with "S.S.D.". (Ex. R-8 and Tr. I, 26-28).

20. Student was first identified as a child with a disability in 2000 by a SSD employee and licensed psychologist, Allison Burner, after testing in February, March and April, 2000. (Exs. R-9 and R-10). On April 24, 2000 a diagnostic team determined that Student met the criteria established by the State of Missouri for the education disability of "Other Health Impaired". Parent did not dispute the OHI diagnosis in 2000. (Ex. R-11).

21. A reevaluation of Student was sought by District in fall 2003 due to perceived behavior problems at school; however Parent adamantly opposed any additional testing of Student. (Tr. I, 42-43 and Ex.R-29).

22. During the Hearing, Parent objected to the identification of Student as ADHD without a medical diagnosis. (Tr. II-168-170).

23. Parent testified that she took the information from the District to Student's pediatrician, Dr. Kanafani, at the Water Tower Place clinic on North Grand Avenue, St. Louis, Missouri and that Dr. Kanafani told her that he did not think Student was ADHD, but that Student's asthma medications could make him "hyper." (Tr. I- 29-31, 52).

24. Parent testified that she believes most of Student's inappropriate behaviors are done to get attention. (Tr. I-10, 17, 28-29, 32, 52). She also testified that Student's hyperactivity was a result of medicines he took for asthma. (Tr. I, 28-30).

25. No special education evaluation or other diagnostic assessment has been performed on Student since March 2000 because of Parent's objections. (Tr. I, 43 and Exs. R-29, 39).

26. Subsequent to April 2000, SSD and Parkway developed and implemented individualized education programs (IEPs") for Student on nine (9) occasions. (Exs. R-11, R-14, R-16, R-18, R-21, R-28, R-30, R-34, R-41).

27. On or about April 24, 2000 after Student was identified, evaluated and diagnosed, Student's IEP team developed an initial IEP for Student, which called for placement in Parkway, in a regular classroom with resource room services. (R-11, p. 91).

28. During the subsequent school years, Student's IEP team met on April 20, 2001, April 15, 2002 and January 10, 2003. Parent participated in these IEP meetings. (Exs. R-14, R-16, R-18). During this period, Student's placement remained in regular education, with special education provided through the resource room teacher, Tara Copeland.

29. Student's IEP team reconvened on April 22, 2003, Parent participated in this IEP meeting. (Ex. R-21). The resulting IEP called for 80 minutes per week ("mpw") of special education as follows: 30 mpw of social skills, 30 mpw organization and 80 minutes per month

social work services. In addition, Student would receive 30 mpw organization in general education. (Ex. R-21, p. 170).

30. Parent was invited but did not attend any of the IEP meetings in the fall of 2003 or January 2004. (Exs. R-28, R-30, R-34, R-41).

31. District documented various perceived behavior problems with Student and contacts with Parent regarding his behaviors. (Exs. R-13, R-15, R-17, R-24, R-53).

32. In Fourth grade, beginning in September 2003, Student's problem behaviors appeared to increase. On September 16, 2003, the school called Parent to discuss concerns about sexual harassment charge by a female student. (Tr. I, 38-42).

33. Student's IEP team met again on September 25, 2003, to develop an IEP for the 2003-2004 school year as a result of behaviors that occurred at the beginning of Fourth grade. (Tr. I, 64, 85-93, II, 148-151 and Ex. R-28).

34. SSD reconvened Student's IEP team in October 6, 2003, again as a result of behaviors that were perceived by SSD, Parkway and parents of other students as sexual harassment. Parent did not attend this IEP meeting. (Tr. I, 64, 93-95, II, 148-151 and Ex. R-30).

35. SSD licensed psychologist, Alison Burner, testified about her testing of Student in 2000, her efforts to test Student in 2003 and 2004, including her interaction with Parent about testing. (Tr. II, 4-58). Parent's cross-examination of Ms. Burner indicated a lack of communication or misunderstandings between them (Tr. II, 24-25, 53-55). The Hearing Panel also questioned Ms. Burner (Tr. II, 25-52).

36. Testimony was offered from Student's classroom teacher, Laura Barnhill, about his academic performance and his behaviors. Parent did not cross-examine Ms. Barnhill. The Hearing Panel addressed questions to her. (Tr. II, 107-131).

37. Student's resource teacher, Tara Copeland, testified about Student's performance and his behaviors in grades 1, 2, 3 and 4. Parent did not cross-examine Ms. Copeland. The Hearing Panel addressed questions to her. (Tr. I, 71-95 and Tr. II, 59-78).

38. Ms. Copeland testified that a social worker referral was sought in January 2003 when Student was in Third grade because he was exhibiting sexual behaviors and Parent did not object to this referral (Tr. I, 79-85, Ex. R-18, 19, 21).

39. Administrative Intern, Lynn Hedrick at Mason Ridge from 2002-2004, testified about Student's behaviors and her interactions with Student and Parent in grades 2, 3 and 4. (Exs. R-17, R-20, R-24, R-52). Ms. Hedrick's undergraduate degree is in behavior disorders and her Master's degree is in learning disabilities. In addition, she has a certificate in school administration. Parent did not cross-examine Ms. Hedrick. The Hearing Panel addressed questions to her. (Tr. II, 132-167).

40. Ms. Hedrick testified regarding incidents of inappropriate behavior of a sexual nature in grades 3 and 4 by Student.

41. Lori Zamler, a social worker for SSD, testified regarding her work with Student during 2003 and 2004. Parent cross-examined Ms. Zamler. The Hearing Panel addressed questions to Ms. Zamler. (Tr. II, 79-107).

42. SSD and Parkway after conducting an investigation and holding four (4) IEP meetings in 2003 and 2004, made a decision to change Student's placement within Mason Ridge Elementary to a more restrictive setting without additional testing of Student. (Exs. R-28, R-30, R-34, R-41).

43. Parent objected to the number of minutes Student would be outside of the regular class room in the March, 2004 IEP in writing. (Ex. R-42).

44. Student's IEP dated 10/6/03 includes reevaluation screening results indicating that the IEP team “. . . agrees that additional testing is need (sic) in the areas of: emotional disturbance.” (Ex. R-30).

45. Ms. Hedrick, administrative intern, testified to frequent, regular dealings with Student in many contexts of the school environment (Tr. II,132-161). She testified to her extensive educational credentials, experiences in special education, and her familiarity with students having an ADHD diagnosis. In this context she explained that she did not see the behaviors exhibited by Student as ADHD related (Tr. II,158 -164).

46. A “comprehensive evaluation” to diagnose a student with ADHD needs to have more extensive sources of information than included in the “comprehensive educational evaluations” of the original diagnostic report (R-9).

47. Based on the testimony presented by SSD, the Hearing Panel is unable to discern whether the original diagnosis of ADHD was fully supported and whether Student continues to meet the criteria for ADHD and OHI.

48. Parent rejected the suggested placement for Student outside of regular education more than 60% of the time although she did not dispute the appropriateness of any of the elements of the October 2003 IEP.

49. Parent disagrees with placing student in Special Education for more time, including more than 60% of the time.

50. Parent testified that she wants the outcome of her due process request to be what is best for her child. (Tr. I, 46). She also stated that she did not understand what testing was sought. (Tr. I, 50, 65).

51. Parent testified that Student seemed to do fine during his first week at Pierremont. (Tr. I, 61).

52. Ms. Zamler testified that Student is reportedly doing extremely well in his current placement at Pierremont Elementary School (Tr. II- 104-105).

53. The Hearing was held over two days. Parent proceeded pro se, without an attorney. Parent was accompanied by and advised by Mary Meehan without objection from Counsel for SSD. She had the opportunity to offer evidence of her fiancé, Brian Johnson, without objection by Counsel for SSD even though Parent had not identified Mr. Johnson five days before the Hearing as required by the Amended Notice of Hearing, but did not do so.

54. Parent received a full, fair opportunity to present her case.

CONCLUSIONS OF LAW

1. This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; the IDEA's implementing regulations, 34 C.F.R. Part 300; Missouri's special education statutes, §§162.670-162.999, RSMo.; and the Missouri state regulation implementing its special education statutes, 5 C.S.R. §70-742.140 ("Individuals With Disabilities Education Act, Part B This rule incorporates by reference changes to the annual program plan required by new federal statutes for the provision of the services to eligible children."). The Missouri regulation is referred to as the State Plan. The IDEA, its regulations and the State Plan set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the SSD in providing special education and related services to students with disabilities.

2. The Student is a “child with a disability,” as that term is defined in the IDEA, its regulations, 34 C.F.R. §300.7 and a handicapped child for purposes of Missouri Law. From an educational perspective Student is diagnosed as other Health Impaired.

3. The Special School District and the Parkway School District are Missouri School Districts organized pursuant to Missouri Statutes. Parent and Student are now and have been residents of the City of St. Louis, Student is eligible to attend school within Parkway School District under the Voluntary Interdistrict Choice (VIC) program during all times relevant to this due process proceeding. Pursuant to Missouri law, SSD and Parkway School District are responsible for providing special education and related services to students with disabilities, as defined by the Missouri State Plan for Implementing Part B of the Individuals with Disabilities Education Act, who attended school in the Parkway School District including Student.

4. The State Plan was in effect at all material times during this proceeding. The State Plan constitutes regulations of the State of Missouri, which further define the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies.

5. The purpose of the IDEA and its regulations is: (1) “to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs”; (2) “to ensure that the rights of children with disabilities and their parents are protected”; and, (3) “to assess and ensure the effectiveness of efforts to educate those children.” 34 C.F.R. § 300.1.

6. The IDEA requires that a disabled child be provided with access to a “free appropriate public education.” (“FAPE”) Board of Education of the Hendrick Hudson Central School District, Board Of Education, Westchester County v. Rowley, 458 U.S. 176, 102 S.Ct.

3034, 3049, 73 L.Ed.2d 690 (1982). The term “free appropriate public education” is found in the IDEA 20 U.S.C. §1401(8) and is defined by 34 C.F.R. § 300.8 as follows:

“...the term ‘free appropriate public education’ means special education and related services that--(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include preschool, elementary school, or secondary school education in the State involved; and, (d) Are provided in conformity with an IEP that meets the requirements of §300.340--300.350.” A principal component of the definition of FAPE is that the special education and related services provided to the student with a disability, “meet the standards of the SEA” (State Board of Education), and “the requirements of this part”. 34 C.F.R. Part 300.

7. The IDEA requirement to provide a FAPE “is satisfied when the state provides personalized instruction with sufficient support to benefit educationally from that instruction; the requirement of a FAPE does not require the state to maximize each child’s potential commensurate with the opportunity provided to non-disabled children.” Breen v. St. Charles R. [VI] School District, 2 F.Supp.2d. 1214, 1221 (E.D.Mo.1997), aff’d. 141 F.3d 1167, 1998 WL 172602 (8th Cir.1998)(unpublished decision); see also, Rowley, 458 U.S. at 200, 102 S. Ct. 3034; Reese v. Board of Education of Bismarck R-V School District, 225 F.Supp.2d 1149, 1155 (E.D. Mo. 2002).

8. If parents believe that the educational program provided for their child fails to meet this standard, they may obtain a state administrative due process hearing. 34 C.F.R. § 300.506; Thompson v. Board of the Special School District No. 1, 144 F.3d 574, 578 (8th Cir. 1998); Fort Zumwalt School District v. Clynes, 119 F.3d 607, 610 (8th Cir. 1997), cert. denied 523 U.S. 1137, 118 S.Ct. 1840. 140 L.Ed2d 1090 (1998).

9. The IDEA is designed to enable children with disabilities to have access to a free appropriate public education which is designed to meet their particular needs. O’Toole by

O'Toole v. Olathe District Schools Unified School District No. 233, 144 F.3d 692, 698 (10th Cir.1998).

10. A key component of IDEA for delivery of special education is the “individualized education program,” or “IEP.” Honig v. Doe, 484 U.S. 305, 311 (1988).

The IEP is developed as a result of collaborations between parents, educators, and representatives of the school district; it “sets out the child’s present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives.” Id.

11. The March 3, 2004 IEP for Student was developed in accordance with the requirements of the IDEA. Parent was given an opportunity to participate in the development of this IEP. Blackmon v. Springfield R-XII School District, 198 F.3d 648 (8th Cir. 1999).

12. The March 3, 2004 IEP is reasonably calculated to provide Student with educational benefit given that no additional assessment or evaluation has been performed since March 2000. This IEP is intended to provide Student with personalized instruction with sufficient support to allow Student to benefit educationally from that instruction. Breen v. St. Charles R [VI] School District, 2 F.Supp.2d. 1214, 1221 (E.D.Mo.1997), aff’d. 141 F.3d 1167, 1998 WL 172602 (8th Cir.1998)(unpublished decision).

13. In addition to the requirement for FAPE found in the IDEA, there is a “strong Congressional preference” for educating students in the least restrictive environment. Carl D. v. Special School District. of St. Louis County, Mo., 21 F.Supp.2d

1042, 1058 (E.D. Mo. 1998) (“IDEA evidences a strong congressional preference for mainstreaming”); Reese, supra at 1159.

14. Placement in regular education more than 60% of the time is not the least restrictive environment for Student and is not the preferred placement for Student under the IDEA, however, without additional assessments, the school districts have been left with little choice.

III. DECISION

It is the unanimous decision of this Hearing Panel that judgment be entered in favor of Special School District and against Parent on question of whether the placement District offered in the March 2004 IEP was reasonably calculated to provide FAPE to Student and complied with the requirements of the IDEA and the State Plan with respect to his placement, based on the assessment information available to it.

Parent rejected the March 2004 IEP and the more restrictive placement that was offered with the IEP and filed this due process. However, based on Parent’s statements at the Hearing the Hearing Panel concludes that the Parent did not fully understand the request for new assessments and further that Parent has changed her position and will permit the District to perform comprehensive new assessments of Student if they are discussed with her in advance. Therefore, Hearing Panel strongly recommends that SSD promptly convene a reevaluation meeting and perform comprehensive assessments of Student within 30 days of this Decision. Such assessments should be by different examiners than those who assessed Student in 2000 and should include a medical examination by a practitioner experienced in diagnosing childhood emotional disorders, in addition to attention deficit hyperactivity disorder. Parent shall be involved in the meeting to plan the assessments which shall be explained to her. The Hearing

Panel further directs that promptly upon completion of reassessment of Student that an IEP meeting be held to update all areas including Student's present level of performance, if necessary to prepare a behavioral intervention plan including highly structured, detailed positive behavior supports and to reconsider the question of placement for Student.

IV. ORDER

Parents' Request for Due Process is dismissed and an Order is entered consistent with the Findings of Fact, Conclusions of Law and Decision set forth above.

V. APPEAL PROCEDURE

PLEASE TAKE NOTICE that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter. You have a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, §536.010 et seq. RSMo. and federal law 20. U.S.C. §1415(e).

PLEASE TAKE NOTICE that you also have a right to file a civil action in Federal or State Court pursuant to the IDEA. See 20 U.S.C. §1415; 34 C.F.R. §300.512.

Dated: September ___, 2004

Margaret M. Mooney, Hearing Chair

Margaret Gray, Panel Member

Karen Aslin, Panel Member

Copies of this Decision will be mailed to the Parent and Counsel for the Special School District of St. Louis County and to Parkway C-2 School District on this date by certified mail return receipt requested.

